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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Ronnie Manns,

10 Plaintiff,

11 v.

12 PennyMac Loan Services LLC,

13 Defendant.  
14

No. CV-24-00879-PHX-DWL

**ORDER**

15 Pending before the Court is a Rule 12(b)(6) motion to dismiss filed by Defendant  
16 PennyMac Loan Services LLC (“Defendant”). (Doc. 21.) For the following reasons, the  
17 motion is granted.

18 **RELEVANT BACKGROUND**

19 On March 18, 2024, Ronnie Manns (“Plaintiff”), who is proceeding *pro se*,  
20 commenced an action against Defendant by filing a complaint in Pinal County Superior  
21 Court. (Doc. 1-1.)

22 On April 17, 2024, Defendant timely removed the action to this Court based on  
23 diversity jurisdiction. (Doc. 1.)

24 On April 25, 2024, Plaintiff filed his operative pleading, the First Amended  
25 Complaint (“FAC”). (Doc. 17.) The FAC alleges that Plaintiff and his wife obtained a  
26 home loan from Defendant, which is governed by a deed of trust, and that “Defendant  
27 breached the contract when [it] misapplied the September 22, 2020, the December 30,  
28 2022, and the March 2, 2023, payments by deeming [those payments] principal reduction

1 instead of a periodic payment.” (*Id.* at 1-2.) The FAC alleges that these acts of  
 2 misapplication “have proven very damaging,” but does not explain why. (*Id.* at 2.) Next,  
 3 the FAC alleges that Defendant engaged in “Unfair Accounting Practices” “by attempt of  
 4 an unauthorized withdraw from Plaintiff’s checking account on January 1, 2022, causing  
 5 Plaintiff’s account to be overdrawn and major turmoil between Plaintiff, Plaintiff’s bank,  
 6 and in Plaintiff’s household.” (*Id.*) Finally, the FAC alleges that Defendant engaged in  
 7 “False Representation” on two occasions by failing to properly document certain payments  
 8 made by Plaintiff. (*Id.* at 3.) Based on these claims, the FAC requests “award of a clear  
 9 and free title” to Plaintiff’s property, as well as “correction of the record and credit report,  
 10 punitive damages of no less than one million dollars (\$1,000,000.00) and whatever other  
 11 remedy that the court feels is fair and just.” (*Id.*)

12 On May 10, 2024, Defendant filed the pending motion to dismiss. (Doc. 21.)

13 On May 15, 2024, Plaintiff filed an opposition. (Doc. 22.)

14 On May 23, 2024, Defendant filed a reply. (Doc. 23.)

## 15 DISCUSSION

### 16 I. Legal Standard

17 Under Rule 12(b)(6), “to survive a motion to dismiss, a party must allege ‘sufficient  
 18 factual matter, accepted as true, to state a claim to relief that is plausible on its face.’” *In*  
 19 *re Fitness Holdings Int’l, Inc.*, 714 F.3d 1141, 1144 (9th Cir. 2013) (citation omitted). “A  
 20 claim has facial plausibility when the plaintiff pleads factual content that allows the court  
 21 to draw the reasonable inference that the defendant is liable for the misconduct alleged.”  
 22 *Id.* (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). “[A]ll well-pleaded allegations of  
 23 material fact in the complaint are accepted as true and are construed in the light most  
 24 favorable to the non-moving party.” *Id.* at 1144-45 (citation omitted). However, the court  
 25 need not accept legal conclusions couched as factual allegations. *Iqbal*, 556 U.S. at 679-  
 26 80. Moreover, “[t]hreadbare recitals of the elements of a cause of action, supported by  
 27 mere conclusory statements, do not suffice.” *Id.* at 678. The court also may dismiss due  
 28 to “a lack of a cognizable legal theory.” *Mollett v. Netflix, Inc.*, 795 F.3d 1062, 1065 (9th

1 Cir. 2015) (citation omitted).

2 II. The Parties' Arguments

3 Defendant argues the FAC is subject to dismissal under Rule 12(b)(6) for an array  
4 of reasons. (Doc. 21.) First, Defendant argues the contract claim fails because the deed of  
5 trust identifies how loan payments will be applied and all three of the alleged  
6 misapplications identified in the FAC were, in fact, proper applications pursuant to the  
7 deed of trust. (*Id.* at 8-10.) Second, Defendant argues the contract claim also fails for the  
8 independent reason that “Plaintiff alleges no damages that flow from [the] alleged breach  
9 of contract—[Plaintiff] instead asks the court to extinguish the deed of trust, rendering him  
10 a free house, and also award him \$1,000,000 in punitive damages. Even if [Defendant]  
11 breached the contract’s terms (it did not), [P]laintiff is not entitled to free and clear title  
12 and punitive damages as a result of the breach.” (*Id.* at 10.) Third, Defendant argues that,  
13 to the extent Plaintiff asserts a separate “unfair accounting practices” claim, any such claim  
14 fails because (a) it is not cognizable under Arizona law and (b) Defendant could not have  
15 acted unfairly by applying Plaintiff’s payments consistent with the deed of trust. (*Id.* at  
16 11.) Fourth, Defendant argues that any “false representation” claim fails because fraud  
17 was not pled with particularity, because there are insufficient allegations of scienter,  
18 reliance, and injury, and because the exhibits attached to the FAC demonstrate there was  
19 no misrepresentation. (*Id.* at 11-12.) Fifth, Defendant argues that any tort claims are also  
20 barred by the economic loss doctrine. (*Id.* at 12.) Sixth, and at a minimum, Defendant  
21 argues that any claim for punitive damages must be dismissed. (*Id.* at 12-13.)

22 In response, Plaintiff argues that because the deed of trust includes the phrase  
23 “[s]uch payments shall be applied to each Periodic Payment in the order in which it became  
24 due,” this shows that his “early September 22[, 2020] payment should have been applied  
25 to November 2020’s due date” instead of being applied to reduce the loan’s principal  
26 balance. (*Id.* at 1-2.) Turning to damages, Plaintiff “admits that he is lacking in the ability  
27 to place a monetary value on the cost of a reputation, on self-esteem, on dignity, and on  
28 self-respect” and then contends, somewhat confusingly, that he “was blessed in the past to

1 have been able to amass the large amounts of fees and charges paid to Defendant like late  
2 charges, non-sufficient fund charges, short payment corporate advances, and property  
3 inspections.” (*Id.* at 3.) Plaintiff continues: “[T]his duress and stress is beginning to take  
4 a major toll [sic] on Plaintiff’s health. The plaintiff places a monetary value on punitive  
5 damages and asks for no less than one point five million dollars along with clear title to the  
6 property.” (*Id.*) Finally, as for his “unfair accounting practices” and “false representation”  
7 claims, Plaintiff fails to address the dismissal arguments raised by Defendant and seems to  
8 indicate that both claims turn on the alleged misapplication of his September 22, 2020  
9 payment. (*Id.*)

10 In reply, Defendant argues that Plaintiff has seemingly abandoned any contract  
11 claim premised on the December 2022 and March 2023 payments, that the September 2020  
12 payment was properly applied to the loan’s principal balance consistent with § 2 of the  
13 deed of trust, and that Plaintiff’s contrary theory—that the September 2020 payment should  
14 have been applied toward the monthly payment that would have become due in November  
15 2020—is contrary to § 2 of the deed of trust and nonsensical, because “[i]f [Defendant]  
16 applied payments against the loan as [P]laintiff suggests, extra payments made by  
17 borrowers would go toward the next potential payment into perpetuity instead of lowering  
18 the principal balance.” (Doc. 23 at 1-3.) Next, Defendant contends that, to the extent  
19 Plaintiff seeks to recover reputational damages pursuant to his contract claim, such  
20 damages are both speculative and not cognizable under Arizona law. (*Id.* at 3-4.)  
21 Defendant also contends that Plaintiff’s reference to “large amounts of fees and charges  
22 paid to Defendant” cannot salvage his contract claim because (a) such fees are not alleged  
23 in the FAC and (b) at any rate, Defendant advanced various funds to Plaintiff and also  
24 “waived a considerable amount of fees and charges so [P]laintiff could meet his monthly  
25 payment obligations.” (*Id.* at 4.) Finally, Defendant notes that Plaintiff failed to address  
26 its dismissal arguments related to the “unfair accounting practices” and “false  
27 representation” claims. (*Id.* at 4-5.)

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1     III.     Analysis

2             The Court agrees with Defendant that the FAC is subject to dismissal under Rule  
3     12(b)(6).

4             As an initial matter, although Plaintiff faults Defendant for using his September 22,  
5     2020 payment to reduce the principal balance of his loan instead of applying it toward the  
6     monthly payment that was not yet due but would have become due in November 2020,  
7     there is a strong argument that Defendant’s approach was permissible under § 2 of the deed  
8     of trust. (Doc. 21-1 at 4 [ “[A]ll payments accepted and applied by Lender shall be applied  
9     in the following order of priority: (a) interest due under the Note; (b) principal due under  
10    the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic  
11    Payment in the order in which it becomes due. Any remaining amounts shall be applied  
12    first to late charges, second to any other amounts due under this Security Instrument, and  
13    then to reduce the principal balance of the Note.”].) Nevertheless, even assuming for the  
14    sake of argument that Defendant breached the deed of trust by misapplying the September  
15    22, 2020 payment (and by misapplying the other payments referenced in the FAC), the  
16    FAC does not allege any resulting *damages*.<sup>1</sup> In fact, the FAC alleges that from August  
17    2020 to January 2022, Plaintiff was “on time” on all of his payments (Doc. 17 at 2), which  
18    seems to undercut any suggestion that Plaintiff was harmed by the manner in which  
19    Defendant applied a payment he made in September 2020. At any rate, the absence of  
20    damages means Plaintiff cannot succeed on his contract claim. *See, e.g., Thomas v.*  
21    *Montelucia Villas, LLC*, 302 P.3d 617, 621 (Ariz. 2013) (“To bring an action for the breach  
22    of the contract, the plaintiff has the burden of proving the existence of the contract, its  
23    breach and the resulting damages.”) (citation omitted); *Chartone, Inc. v. Bernini*, 83 P.3d  
24    1103, 1111 (Ariz. Ct. App. 2004) (noting that “damages [are] an essential element of [a]  
25    breach-of-contract claim”).

26             In a seeming effort to shore up this deficiency, Plaintiff asserts in his opposition

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28     <sup>1</sup> Although the FAC asserts that the payment misapplications have “proven very  
damaging” (Doc. 17 at 2), such conclusory, fact-free allegations are insufficient to state a  
claim. *Iqbal*, 556 U.S. at 679-80.

1 brief that he has suffered damages arising from unspecified harm to his “reputation,” “self-  
 2 esteem,” “dignity,” and “self-respect.” (Doc. 22 at 3.) But putting aside that fact that the  
 3 FAC does not contain any allegations regarding reputational or emotional harm and that  
 4 the references to those categories of harm in the opposition brief are vague and  
 5 undeveloped, such damages are not recoverable under Arizona law in a contract action.  
 6 *Lindsey v. Univ. of Arizona*, 754 P.2d 1152, 1158 (Ariz. Ct. App. 1987) (“In an action for  
 7 breach of contract, the employee is not permitted recovery for injury to his reputation  
 8 because the computation of damages is too speculative and the damage cannot reasonably  
 9 be presumed to be within the contemplation of the parties when they entered into the  
 10 contract.”); *Davis v. Bank of America Corp.*, 2012 WL 5984939, \*3 (D. Ariz. 2012)  
 11 (“Under Arizona law, punitive damages and damages for non-economic injuries, like  
 12 emotional distress, may not be recovered for breach of contract.”) (citations omitted); *Fox*  
 13 *v. Citicorp Credit Services, Inc.*, 15 F.3d 1507, 1517 (9th Cir. 1994) (with respect to the  
 14 Arizona “state-law claim . . . alleging breach of contract,” affirming the district court’s  
 15 grant of summary judgment where the plaintiffs “failed to put forward evidence of any  
 16 contractual damages” and instead only “claimed . . . emotional distress and mental  
 17 anguish,” because such damages are not “of a contractual nature”). Plaintiff also seems to  
 18 suggest for the first time in his opposition brief that he sustained damages in the form of  
 19 “late charges, non-sufficient fund charges, short payment corporate advances, and property  
 20 inspections” (Doc. 22 at 3), but those allegations do not appear in the FAC and Plaintiff  
 21 makes no effort to develop them or tether them to the challenged acts of payment  
 22 misapplication.

23 This leaves Plaintiff’s “unfair accounting practices” and “false representation”  
 24 claims. The Court agrees with Defendant that the former is subject to dismissal because it  
 25 is not cognizable under Arizona law. Nor has Plaintiff sufficiently alleged any damages  
 26 arising from challenged accounting practices, as discussed in the previous paragraph.  
 27 Finally, the “false representation” claim is subject to dismissal because, at a minimum,  
 28 there are insufficient allegations of reliance and resulting damage. *Carrel v. Lux*, 420 P.2d

564, 568 (Ariz. 1966) (under Arizona law, “[t]he elements necessary to establish fraudulent misrepresentation” include “the hearer’s . . . reliance on” the false representation and “his consequent and proximate injury”); *KB Home Tucson, Inc. v. Charter Oak Fire Ins. Co.*, 340 P.3d 405, 412 n.7 (Ariz. Ct. App. 2014) (under Arizona law, the “elements of negligent misrepresentation” include that “the plaintiff justifiably relied on the incorrect information” and “resulting damage”).

#### IV. Leave To Amend

Defendant asks the Court to dismiss the FAC “with prejudice” because “any amendment is futile.” (Doc. 21 at 1; Doc. 23 at 6.) This request implicates Rule 15(a) of the Federal Rules of Civil Procedure, which “advises the court that ‘leave [to amend] shall be freely given when justice so requires.’” *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003). “This policy is ‘to be applied with extreme liberality.’” *Id.* Thus, leave to amend should be granted unless “the amendment: (1) prejudices the opposing party; (2) is sought in bad faith; (3) produces an undue delay in litigation; or (4) is futile.” *AmerisourceBergen Corp. v. Dialysist W., Inc.*, 465 F.3d 946, 951 (9th Cir. 2006).

Although the Court is quite skeptical that Plaintiff will be able to add any new factual allegations that could remedy the deficiencies identified in Part III above, the Court is also mindful that courts “have an obligation where the petitioner is pro se . . . to construe the pleadings liberally and to afford the petitioner the benefit of any doubt. In fact, before dismissing a pro se complaint the district court must provide the litigant with notice of the deficiencies in his complaint in order to ensure that the litigant uses the opportunity to amend effectively. A district court should not dismiss a pro se complaint without leave to amend unless it is absolutely clear that the deficiencies of the complaint could not be cured by amendment.” *Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th Cir. 2012) (cleaned up). Given these principles, the Court concludes that Plaintiff should be granted leave to amend.

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1 Accordingly,

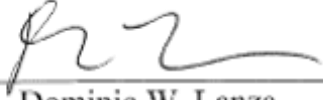
2 **IT IS ORDERED** that:

3 1. Defendant's motion to dismiss (Doc. 21) is **granted**. The FAC is dismissed.

4 2. Plaintiff may file a Second Amended Complaint ("SAC") within 14 days of  
5 the issuance of this order. Any changes shall be limited to attempting to cure the  
6 deficiencies raised in this order and Plaintiff shall, consistent with LRCiv 15.1(a), attach a  
7 redlined version of the pleading as an exhibit.

8 3. If Plaintiff does not file a SAC within 14 days of the issuance of this order,  
9 the Clerk shall enter judgment accordingly and terminate this action.

10 Dated this 26th day of June, 2024.

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Dominic W. Lanza  
United States District Judge  
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